

ASSEMBLY BILL

No. 2100

Introduced by Assembly Member Coto

February 18, 2010

An act to amend Sections 17276, 17276.9, 17276.10, 23101, 24416, 24416.9, 24416.10, 25120, and 25135 of, to repeal Sections 23663 and 25128.5 of, and to repeal and amend Section 25136 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2100, as introduced, Coto. Income taxation: deductions: net operating loss carrybacks: credits: eligible assignees: single sales factor.

The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. Existing law allows a deduction for specified net operating losses, including allowing net operating loss carrybacks attributable to taxable years beginning on or after January 1, 2011.

This bill would disallow the use of net operating loss carrybacks by individual and corporate taxpayers.

The Corporation Tax Law authorize various credits against the taxes imposed by that law. Existing law provides, for taxable years beginning on or after July 1, 2008, that any credit that is an eligible credit, as defined, may be assigned to any eligible assignees, as defined, that may be used by that eligible assignee for taxable years beginning on or after January 1, 2010.

This bill would repeal these provisions authorizing the assignment of credits and the use of those credits by eligible assignees.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. Existing law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided.

This bill would repeal the provisions that allow a taxpayer to have income apportioned in accordance with a single sale factor formula.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17276 of the Revenue and Taxation Code
2 is amended to read:
3 17276. Except as provided in Sections 17276.1, 17276.2,
4 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided
5 by Section 172 of the Internal Revenue Code, relating to a net
6 operating loss deduction, shall be modified as follows:
7 (a) (1) Net operating losses attributable to taxable years
8 beginning before January 1, 1987, shall not be allowed.
9 (2) A net operating loss shall not be carried forward to any
10 taxable year beginning before January 1, 1987.
11 (b) (1) Except as provided in paragraphs (2) and (3), the
12 provisions of Section 172(b)(2) of the Internal Revenue Code,
13 relating to the amount of carryovers, shall be modified so that the
14 applicable percentage of the entire amount of the net operating
15 loss for any taxable year shall be eligible for carryover to any

1 subsequent taxable year. For purposes of this subdivision, the
2 applicable percentage shall be:

3 (A) Fifty percent for any taxable year beginning before January
4 1, 2000.

5 (B) Fifty-five percent for any taxable year beginning on or after
6 January 1, 2000, and before January 1, 2002.

7 (C) Sixty percent for any taxable year beginning on or after
8 January 1, 2002, and before January 1, 2004.

9 (D) One hundred percent for any taxable year beginning on or
10 after January 1, 2004.

11 (2) In the case of a taxpayer who has a net operating loss in any
12 taxable year beginning on or after January 1, 1994, and who
13 operates a new business during that taxable year, each of the
14 following shall apply to each loss incurred during the first three
15 taxable years of operating the new business:

16 (A) If the net operating loss is equal to or less than the net loss
17 from the new business, 100 percent of the net operating loss shall
18 be carried forward as provided in subdivision (d).

19 (B) If the net operating loss is greater than the net loss from the
20 new business, the net operating loss shall be carried over as
21 follows:

22 (i) With respect to an amount equal to the net loss from the new
23 business, 100 percent of that amount shall be carried forward as
24 provided in subdivision (d).

25 (ii) With respect to the portion of the net operating loss that
26 exceeds the net loss from the new business, the applicable
27 percentage of that amount shall be carried forward as provided in
28 subdivision (d).

29 (C) For purposes of Section 172(b)(2) of the Internal Revenue
30 Code, the amount described in clause (ii) of subparagraph (B) shall
31 be absorbed before the amount described in clause (i) of
32 subparagraph (B).

33 (3) In the case of a taxpayer who has a net operating loss in any
34 taxable year beginning on or after January 1, 1994, and who
35 operates an eligible small business during that taxable year, each
36 of the following shall apply:

37 (A) If the net operating loss is equal to or less than the net loss
38 from the eligible small business, 100 percent of the net operating
39 loss shall be carried forward to the taxable years specified in
40 subdivision (d).

1 (B) If the net operating loss is greater than the net loss from the
2 eligible small business, the net operating loss shall be carried over
3 as follows:

4 (i) With respect to an amount equal to the net loss from the
5 eligible small business, 100 percent of that amount shall be carried
6 forward as provided in subdivision (d).

7 (ii) With respect to that portion of the net operating loss that
8 exceeds the net loss from the eligible small business, the applicable
9 percentage of that amount shall be carried forward as provided in
10 subdivision (d).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue
12 Code, the amount described in clause (ii) of subparagraph (B) shall
13 be absorbed before the amount described in clause (i) of
14 subparagraph (B).

15 (4) In the case of a taxpayer who has a net operating loss in a
16 taxable year beginning on or after January 1, 1994, and who
17 operates a business that qualifies as both a new business and an
18 eligible small business under this section, that business shall be
19 treated as a new business for the first three taxable years of the
20 new business.

21 (5) In the case of a taxpayer who has a net operating loss in a
22 taxable year beginning on or after January 1, 1994, and who
23 operates more than one business, and more than one of those
24 businesses qualifies as either a new business or an eligible small
25 business under this section, paragraph (2) shall be applied first,
26 except that if there is any remaining portion of the net operating
27 loss after application of clause (i) of subparagraph (B) of that
28 paragraph, paragraph (3) shall be applied to the remaining portion
29 of the net operating loss as though that remaining portion of the
30 net operating loss constituted the entire net operating loss.

31 (6) For purposes of this section, the term “net loss” means the
32 amount of net loss after application of Sections 465 and 469 of the
33 Internal Revenue Code.

34 ~~(e) Section 172(b)(1) of the Internal Revenue Code, relating to~~
35 ~~net operating loss carrybacks and carryovers and the years to which~~
36 ~~the loss may be carried, is modified as follows:~~

37 ~~(1)~~

38 ~~(c) Net operating loss carrybacks shall not be allowed for any~~
39 ~~net operating losses attributable to taxable years beginning before~~
40 ~~January 1, 2011.~~

1 ~~(2) A net operating loss attributable to taxable years beginning~~
2 ~~on or after January 1, 2011, shall be a net operating loss carryback~~
3 ~~to each of the two taxable years preceeding the taxable year of the~~
4 ~~loss in lieu of the number of years provided therein.~~

5 ~~(A) For a net operating loss attributable to a taxable year~~
6 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~
7 ~~the amount of carryback to any taxable year shall not exceed 50~~
8 ~~percent of the net operating loss.~~

9 ~~(B) For a net operating loss attributable to a taxable year~~
10 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~
11 ~~the amount of carryback to any taxable year shall not exceed 75~~
12 ~~percent of the net operating loss.~~

13 ~~(C) For a net operating loss attributable to a taxable year~~
14 ~~beginning on or after January 1, 2013, the amount of carryback to~~
15 ~~any taxable year shall not exceed 100 percent of the net operating~~
16 ~~loss.~~

17 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~
18 ~~Internal Revenue Code, relating to special rules for REITs, and~~
19 ~~Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,~~
20 ~~relating to corporate equity reduction interest loss, shall apply as~~
21 ~~provided.~~

22 ~~(4) A net operating loss carryback shall not be carried back to~~
23 ~~any taxable year beginning before January 1, 2009.~~

24 ~~(d) (1) (A) For a net operating loss for any taxable year~~
25 ~~beginning on or after January 1, 1987, and before January 1, 2000,~~
26 ~~Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to~~
27 ~~years to which net operating losses may be carried, is modified to~~
28 ~~substitute “five taxable years” in lieu of “20 taxable years” except~~
29 ~~as otherwise provided in paragraphs (2) and (3).~~

30 ~~(B) For a net operating loss for any taxable year beginning on~~
31 ~~or after January 1, 2000, and before January 1, 2008, Section~~
32 ~~172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years~~
33 ~~to which net operating losses may be carried, is modified to~~
34 ~~substitute “10 taxable years” in lieu of “20 taxable years.”~~

35 ~~(2) For any taxable year beginning before January 1, 2000, in~~
36 ~~the case of a “new business,” the “five taxable years” in paragraph~~
37 ~~(1) shall be modified to read as follows:~~

38 ~~(A) “Eight taxable years” for a net operating loss attributable~~
39 ~~to the first taxable year of that new business.~~

1 (B) “Seven taxable years” for a net operating loss attributable
2 to the second taxable year of that new business.

3 (C) “Six taxable years” for a net operating loss attributable to
4 the third taxable year of that new business.

5 (3) For any carryover of a net operating loss for which a
6 deduction is denied by Section 17276.3, the carryover period
7 specified in this subdivision shall be extended as follows:

8 (A) By one year for a net operating loss attributable to taxable
9 years beginning in 1991.

10 (B) By two years for a net operating loss attributable to taxable
11 years beginning prior to January 1, 1991.

12 (4) The net operating loss attributable to taxable years beginning
13 on or after January 1, 1987, and before January 1, 1994, shall be
14 a net operating loss carryover to each of the 10 taxable years
15 following the year of the loss if it is incurred by a taxpayer that is
16 under the jurisdiction of the court in a Title 11 or similar case at
17 any time during the income year. The loss carryover provided in
18 the preceding sentence shall not apply to any loss incurred after
19 the date the taxpayer is no longer under the jurisdiction of the court
20 in a Title 11 or similar case.

21 (e) For purposes of this section:

22 (1) “Eligible small business” means any trade or business that
23 has gross receipts, less returns and allowances, of less than one
24 million dollars (\$1,000,000) during the taxable year.

25 (2) Except as provided in subdivision (f), “new business” means
26 any trade or business activity that is first commenced in this state
27 on or after January 1, 1994.

28 (3) “Title 11 or similar case” shall have the same meaning as
29 in Section 368(a)(3) of the Internal Revenue Code.

30 (4) In the case of any trade or business activity conducted by a
31 partnership or “S” corporation paragraphs (1) and (2) shall be
32 applied to the partnership or “S” corporation.

33 (f) For purposes of this section, in determining whether a trade
34 or business activity qualifies as a new business under paragraph
35 (2) of subdivision (e), the following rules shall apply:

36 (1) In any case where a taxpayer purchases or otherwise acquires
37 all or any portion of the assets of an existing trade or business
38 (irrespective of the form of entity) that is doing business in this
39 state (within the meaning of Section 23101), the trade or business
40 thereafter conducted by the taxpayer (or any related person) shall

1 not be treated as a new business if the aggregate fair market value
2 of the acquired assets (including real, personal, tangible, and
3 intangible property) used by the taxpayer (or any related person)
4 in the conduct of its trade or business exceeds 20 percent of the
5 aggregate fair market value of the total assets of the trade or
6 business being conducted by the taxpayer (or any related person).

7 For purposes of this paragraph only, the following rules shall apply:

8 (A) The determination of the relative fair market values of the
9 acquired assets and the total assets shall be made as of the last day
10 of the first taxable year in which the taxpayer (or any related
11 person) first uses any of the acquired trade or business assets in
12 its business activity.

13 (B) Any acquired assets that constituted property described in
14 Section 1221(1) of the Internal Revenue Code in the hands of the
15 transferor shall not be treated as assets acquired from an existing
16 trade or business, unless those assets also constitute property
17 described in Section 1221(1) of the Internal Revenue Code in the
18 hands of the acquiring taxpayer (or related person).

19 (2) In any case where a taxpayer (or any related person) is
20 engaged in one or more trade or business activities in this state, or
21 has been engaged in one or more trade or business activities in this
22 state within the preceding 36 months (“prior trade or business
23 activity”), and thereafter commences an additional trade or business
24 activity in this state, the additional trade or business activity shall
25 only be treated as a new business if the additional trade or business
26 activity is classified under a different division of the Standard
27 Industrial Classification (SIC) Manual published by the United
28 States Office of Management and Budget, 1987 edition, than are
29 any of the taxpayer’s (or any related person’s) current or prior
30 trade or business activities.

31 (3) In any case where a taxpayer, including all related persons,
32 is engaged in trade or business activities wholly outside of this
33 state and the taxpayer first commences doing business in this state
34 (within the meaning of Section 23101) after December 31, 1993
35 (other than by purchase or other acquisition described in paragraph
36 (1)), the trade or business activity shall be treated as a new business
37 under paragraph (2) of subdivision (e).

38 (4) In any case where the legal form under which a trade or
39 business activity is being conducted is changed, the change in form
40 shall be disregarded and the determination of whether the trade or

1 business activity is a new business shall be made by treating the
2 taxpayer as having purchased or otherwise acquired all or any
3 portion of the assets of an existing trade or business under the rules
4 of paragraph (1) of this subdivision.

5 (5) “Related person” shall mean any person that is related to
6 the taxpayer under either Section 267 or 318 of the Internal
7 Revenue Code.

8 (6) “Acquire” shall include any gift, inheritance, transfer incident
9 to divorce, or any other transfer, whether or not for consideration.

10 (7) (A) For taxable years beginning on or after January 1, 1997,
11 the term “new business” shall include any taxpayer that is engaged
12 in biopharmaceutical activities or other biotechnology activities
13 that are described in Codes 2833 to 2836, inclusive, of the Standard
14 Industrial Classification (SIC) Manual published by the United
15 States Office of Management and Budget, 1987 edition, and as
16 further amended, and that has not received regulatory approval for
17 any product from the United States Food and Drug Administration.

18 (B) For purposes of this paragraph:

19 (i) “Biopharmaceutical activities” means those activities that
20 use organisms or materials derived from organisms, and their
21 cellular, subcellular, or molecular components, in order to provide
22 pharmaceutical products for human or animal therapeutics and
23 diagnostics. Biopharmaceutical activities make use of living
24 organisms to make commercial products, as opposed to
25 pharmaceutical activities that make use of chemical compounds
26 to produce commercial products.

27 (ii) “Other biotechnology activities” means activities consisting
28 of the application of recombinant DNA technology to produce
29 commercial products, as well as activities regarding pharmaceutical
30 delivery systems designed to provide a measure of control over
31 the rate, duration, and site of pharmaceutical delivery.

32 (g) In computing the modifications under Section 172(d)(2) of
33 the Internal Revenue Code, relating to capital gains and losses of
34 taxpayers other than corporations, the exclusion provided by
35 Section 18152.5 shall not be allowed.

36 (h) Notwithstanding any provisions of this section to the
37 contrary, a deduction shall be allowed to a “qualified taxpayer” as
38 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,
39 and 17276.7.

1 (i) The Franchise Tax Board may prescribe appropriate
2 regulations to carry out the purposes of this section, including any
3 regulations necessary to prevent the avoidance of the purposes of
4 this section through splitups, shell corporations, partnerships, tiered
5 ownership structures, or otherwise.

6 (j) The Franchise Tax Board may reclassify any net operating
7 loss carryover determined under either paragraph (2) or (3) of
8 subdivision (b) as a net operating loss carryover under paragraph
9 (1) of subdivision (b) upon a showing that the reclassification is
10 necessary to prevent evasion of the purposes of this section.

11 (k) Except as otherwise provided, the amendments made by
12 Chapter 107 of the Statutes of 2000 shall apply to net operating
13 losses for taxable years beginning on or after January 1, 2000.

14 SEC. 2. Section 17276.9 of the Revenue and Taxation Code
15 is amended to read:

16 17276.9. (a) Notwithstanding Sections 17276, 17276.1,
17 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and
18 Section 172 of the Internal Revenue Code, no net operating loss
19 deduction shall be allowed for any taxable year beginning on or
20 after January 1, 2008, and before January 1, 2010.

21 (b) For any net operating loss or carryover of a net operating
22 loss for which a deduction is denied by subdivision (a), the
23 carryover period under Section 172 of the Internal Revenue Code
24 shall be extended as follows:

25 (1) By one year, for losses incurred in taxable years beginning
26 on or after January 1, 2008, and before January 1, 2009.

27 (2) By two years, for losses incurred in taxable years beginning
28 before January 1, 2008.

29 ~~(e) Notwithstanding subdivision (a), a net operating loss~~
30 ~~deduction shall be allowed for carryback of a net operating loss~~
31 ~~attributable to a taxable year beginning on or after January 1, 2011.~~

32 ~~(d)~~

33 (c) The provisions of this section shall not apply to a taxpayer
34 with net business income of less than five hundred thousand dollars
35 (\$500,000) for the taxable year. For purposes of this subdivision,
36 business income means:

37 (1) Income from a trade or business, whether conducted by the
38 taxpayer or by a passthrough entity owned directly or indirectly
39 by the taxpayer. For purposes of this paragraph, the term
40 “passthrough entity” means a partnership or an “S” corporation.

1 (2) Income from rental activity.

2 (3) Income attributable to a farming business.

3 SEC. 3. Section 17276.10 of the Revenue and Taxation Code
4 is amended to read:

5 17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4,
6 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss
7 attributable to a taxable year beginning on or after January 1, 2008,
8 shall be a net operating carryover to each of the 20 taxable years
9 following the year of the loss, ~~and a net operating loss attributable~~
10 ~~to a taxable year beginning on or after January 1, 2011, shall also~~
11 ~~be a net operating loss carryback to each of the two taxable years~~
12 ~~preceding the taxable year of loss.~~

13 SEC. 4. Section 23101 of the Revenue and Taxation Code is
14 amended to read:

15 23101. (a) “Doing business” means actively engaging in any
16 transaction for the purpose of financial or pecuniary gain or profit.

17 (b) ~~For taxable years beginning on or after January 1, 2011, a~~
18 ~~taxpayer is doing business in this state for a taxable year if any of~~
19 ~~the following conditions has been satisfied:~~

20 (1) ~~The taxpayer is organized or commercially domiciled in this~~
21 ~~state.~~

22 (2) ~~Sales, as defined in subdivision (e) or (f) of Section 25120~~
23 ~~as applicable for the taxable year, of the taxpayer in this state~~
24 ~~exceed the lesser of five hundred thousand dollars (\$500,000) or~~
25 ~~25 percent of the taxpayer’s total sales. For purposes of this~~
26 ~~paragraph, sales of the taxpayer include sales by an agent or~~
27 ~~independent contractor of the taxpayer. For purposes of this~~
28 ~~paragraph, sales in this state shall be determined using the rules~~
29 ~~for assigning sales under Sections 25135 and 25136 and the~~
30 ~~regulations thereunder, as modified by regulations under Section~~
31 ~~25137.~~

32 (3) ~~The real property and tangible personal property of the~~
33 ~~taxpayer in this state exceed the lesser of fifty thousand dollars~~
34 ~~(\$50,000) or 25 percent of the taxpayer’s total real property and~~
35 ~~tangible personal property. The value of real and tangible personal~~
36 ~~property and the determination of whether property is in this state~~
37 ~~shall be determined using the rules contained in Sections 25129~~
38 ~~to 25131, inclusive, and the regulations thereunder, as modified~~
39 ~~by regulation under Section 25137.~~

1 ~~(4) The amount paid in this state by the taxpayer for~~
2 ~~compensation, as defined in subdivision (e) of Section 25120,~~
3 ~~exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent~~
4 ~~of the total compensation paid by the taxpayer. Compensation in~~
5 ~~this state shall be determined using the rules for assigning payroll~~
6 ~~contained in Section 25133 and the regulations thereunder, as~~
7 ~~modified by regulations under Section 25137.~~

8 ~~(c) (1) The Franchise Tax Board shall annually revise the~~
9 ~~amounts in paragraphs (2), (3), and (4) of subdivision (b) in~~
10 ~~accordance with subdivision (h) of Section 17041.~~

11 ~~(2) For purposes of the adjustment required by paragraph (1),~~
12 ~~subdivision (h) of Section 17041 shall be applied by substituting~~
13 ~~“2012” in lieu of “1988.”~~

14 ~~(d) The sales, property, and payroll of the taxpayer include the~~
15 ~~taxpayer’s pro rata or distributive share of pass-through entities.~~
16 ~~For purposes of this subdivision, “pass-through entities” means a~~
17 ~~partnership or an “S” corporation.~~

18 SEC. 5. Section 23663 of the Revenue and Taxation Code is
19 repealed.

20 23663. ~~(a) (1) Notwithstanding any other law to the contrary,~~
21 ~~for each taxable year beginning on or after July 1, 2008, any credit~~
22 ~~allowed to a taxpayer under this chapter that is an “eligible credit~~
23 ~~(within the meaning of paragraph (2) of subdivision (b)) may be~~
24 ~~assigned by that taxpayer to any “eligible assignee” (within the~~
25 ~~meaning of paragraph (3) of subdivision (b)).~~

26 ~~(2) A credit assigned under paragraph (1) may only be applied~~
27 ~~by the eligible assignee against the “tax” of the eligible assignee~~
28 ~~in a taxable year beginning on or after January 1, 2010.~~

29 ~~(3) Except as specifically provided in this section, following an~~
30 ~~assignment of any eligible credit under this section, the eligible~~
31 ~~assignee shall be treated as if it originally earned the assigned~~
32 ~~credit.~~

33 ~~(b) For purposes of this section, the following definitions shall~~
34 ~~apply:~~

35 ~~(1) “Affiliated corporation” means a corporation that is a~~
36 ~~member of a commonly controlled group as defined in Section~~
37 ~~25105.~~

38 ~~(2) “Eligible credit” shall mean:~~

39 ~~(A) Any credit earned by the taxpayer in a taxable year~~
40 ~~beginning on or after July 1, 2008, or~~

1 ~~(B) Any credit earned in any taxable year beginning before July~~
2 ~~1, 2008, that is eligible to be carried forward to the taxpayer's first~~
3 ~~taxable year beginning on or after July 1, 2008, under the~~
4 ~~provisions of this part.~~

5 ~~(3) "Eligible assignee" shall mean any affiliated corporation~~
6 ~~that is properly treated as a member of the same combined~~
7 ~~reporting group pursuant to Section 25101 or 25110 as the taxpayer~~
8 ~~assigning the eligible credit as of:~~

9 ~~(A) In the case of credits earned in taxable years beginning~~
10 ~~before July 1, 2008:~~

11 ~~(i) June 30, 2008, and~~

12 ~~(ii) The last day of the taxable year of the assigning taxpayer~~
13 ~~in which the eligible credit is assigned.~~

14 ~~(B) In the case of credits earned in taxable years beginning on~~
15 ~~or after July 1, 2008:~~

16 ~~(i) The last day of the first taxable year in which the credit was~~
17 ~~allowed to the taxpayer, and~~

18 ~~(ii) The last day of the taxable year of the assigning taxpayer~~
19 ~~in which the eligible credit is assigned.~~

20 ~~(c) (1) The election to assign any credit under subdivision (a)~~
21 ~~shall be irrevocable once made, and shall be made by the taxpayer~~
22 ~~allowed that credit on its original return for the taxable year in~~
23 ~~which the assignment is made.~~

24 ~~(2) The taxpayer assigning any credit under this section shall~~
25 ~~reduce the amount of its unused credit by the face amount of any~~
26 ~~credit assigned under this section, and the amount of the assigned~~
27 ~~credit shall not be available for application against the assigning~~
28 ~~taxpayer's "tax" in any taxable year, nor shall it thereafter be~~
29 ~~included in the amount of any credit carryover of the assigning~~
30 ~~taxpayer.~~

31 ~~(3) The eligible assignee of any credit under this section may~~
32 ~~apply all or any portion of the assigned credits against the "tax"~~
33 ~~(as defined in Section 23036) of the eligible assignee for the taxable~~
34 ~~year in which the assignment occurs, or any subsequent taxable~~
35 ~~year, subject to any carryover period limitations that apply to the~~
36 ~~assigned credit and also subject to the limitation in paragraph (2)~~
37 ~~of subdivision (a).~~

38 ~~(4) In no case may the eligible assignee sell, otherwise transfer,~~
39 ~~or thereafter assign the assigned credit to any other taxpayer.~~

1 ~~(d) (1) No consideration shall be required to be paid by the~~
2 ~~eligible assignee to the assigning taxpayer for assignment of any~~
3 ~~credit under this section.~~

4 ~~(2) In the event that any consideration is paid by the eligible~~
5 ~~assignee to the assigning taxpayer for the transfer of an eligible~~
6 ~~credit under this section, then:~~

7 ~~(A) No deduction shall be allowed to the eligible assignee under~~
8 ~~this part with respect to any amounts so paid, and~~

9 ~~(B) No amounts so received by the assigning taxpayer shall be~~
10 ~~includable in gross income under this part.~~

11 ~~(e) (1) The Franchise Tax Board shall specify the form and~~
12 ~~manner in which the election required under this section shall be~~
13 ~~made, as well as any necessary information that shall be required~~
14 ~~to be provided by the taxpayer assigning the credit to the eligible~~
15 ~~assignee.~~

16 ~~(2) Any taxpayer who assigns any credit under this section shall~~
17 ~~report any information, in the form and manner specified by the~~
18 ~~Franchise Tax Board, necessary to substantiate any credit assigned~~
19 ~~under this section and verify the assignment and subsequent~~
20 ~~application of any assigned credit.~~

21 ~~(3) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
22 ~~Division 3 of Title 2 of the Government Code shall not apply to~~
23 ~~any standard, criterion, procedure, determination, rule, notice, or~~
24 ~~guideline established or issued by the Franchise Tax Board~~
25 ~~pursuant to paragraphs (1) and (2).~~

26 ~~(4) The Franchise Tax Board may issue any regulations~~
27 ~~necessary to implement the purposes of this section, including any~~
28 ~~regulations necessary to specify the treatment of any assignment~~
29 ~~that does not comply with the requirements of this section~~
30 ~~(including, for example, where the taxpayer and eligible assignee~~
31 ~~are not properly treated as members of the same combined~~
32 ~~reporting group on any of the dates specified in paragraph (3) of~~
33 ~~subdivision (b).~~

34 ~~(f) (1) The taxpayer and the eligible assignee shall be jointly~~
35 ~~and severally liable for any tax, addition to tax, or penalty that~~
36 ~~results from the disallowance, in whole or in part, of any eligible~~
37 ~~credit assigned under this section.~~

38 ~~(2) Nothing in this section shall limit the authority of the~~
39 ~~Franchise Tax Board to audit either the assigning taxpayer or the~~

1 eligible assignee with respect to any eligible credit assigned under
2 this section:

3 ~~(g) On or before June 30, 2013, the Franchise Tax Board shall~~
4 ~~report to the Joint Legislative Budget Committee, the Legislative~~
5 ~~Analyst, and the relevant policy committees of both houses on the~~
6 ~~effects of this section. The report shall include, but need not be~~
7 ~~limited to, the following:~~

8 ~~(1) An estimate of use of credits in the 2010 and 2011 taxable~~
9 ~~years by eligible taxpayers.~~

10 ~~(2) An analysis of effect of this section on expanding business~~
11 ~~activity in the state related to these credits.~~

12 ~~(3) An estimate of the resulting tax revenue loss to the state.~~

13 ~~(4) The report shall cover all credits covered in this section, but~~
14 ~~focus on the credits related to research and development, economic~~
15 ~~incentive areas, and low income housing.~~

16 SEC. 6. Section 24416 of the Revenue and Taxation Code is
17 amended to read:

18 24416. Except as provided in Sections 24416.1, 24416.2,
19 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss
20 deduction shall be allowed in computing net income under Section
21 24341 and shall be determined in accordance with Section 172 of
22 the Internal Revenue Code, except as otherwise provided.

23 (a) (1) Net operating losses attributable to taxable years
24 beginning before January 1, 1987, shall not be allowed.

25 (2) A net operating loss shall not be carried forward to any
26 taxable year beginning before January 1, 1987.

27 (b) (1) Except as provided in paragraphs (2) and (3), the
28 provisions of Section 172(b)(2) of the Internal Revenue Code,
29 relating to the amount of carryovers, shall be modified so that the
30 applicable percentage of the entire amount of the net operating
31 loss for any taxable year shall be eligible for carryover to any
32 subsequent taxable year. For purposes of this subdivision, the
33 applicable percentage shall be:

34 (A) Fifty percent for any taxable year beginning before January
35 1, 2000.

36 (B) Fifty-five percent for any taxable year beginning on or after
37 January 1, 2000, and before January 1, 2002.

38 (C) Sixty percent for any taxable year beginning on or after
39 January 1, 2002, and before January 1, 2004.

1 (D) One hundred percent for any taxable year beginning on or
2 after January 1, 2004.

3 (2) In the case of a taxpayer who has a net operating loss in any
4 taxable year beginning on or after January 1, 1994, and who
5 operates a new business during that taxable year, each of the
6 following shall apply to each loss incurred during the first three
7 taxable years of operating the new business:

8 (A) If the net operating loss is equal to or less than the net loss
9 from the new business, 100 percent of the net operating loss shall
10 be carried forward as provided in subdivision (e).

11 (B) If the net operating loss is greater than the net loss from the
12 new business, the net operating loss shall be carried over as
13 follows:

14 (i) With respect to an amount equal to the net loss from the new
15 business, 100 percent of that amount shall be carried forward as
16 provided in subdivision (e).

17 (ii) With respect to the portion of the net operating loss that
18 exceeds the net loss from the new business, the applicable
19 percentage of that amount shall be carried forward as provided in
20 subdivision (d).

21 (C) For purposes of Section 172(b)(2) of the Internal Revenue
22 Code, the amount described in clause (ii) of subparagraph (B) shall
23 be absorbed before the amount described in clause (i) of
24 subparagraph (B).

25 (3) In the case of a taxpayer who has a net operating loss in any
26 taxable year beginning on or after January 1, 1994, and who
27 operates an eligible small business during that taxable year, each
28 of the following shall apply:

29 (A) If the net operating loss is equal to or less than the net loss
30 from the eligible small business, 100 percent of the net operating
31 loss shall be carried forward to the taxable years specified in
32 paragraph (1) of subdivision (e).

33 (B) If the net operating loss is greater than the net loss from the
34 eligible small business, the net operating loss shall be carried over
35 as follows:

36 (i) With respect to an amount equal to the net loss from the
37 eligible small business, 100 percent of that amount shall be carried
38 forward as provided in subdivision (e).

39 (ii) With respect to that portion of the net operating loss that
40 exceeds the net loss from the eligible small business, the applicable

percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water’s-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water’s-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

~~(d) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:~~

~~(1)~~

1 (d) Net operating loss carrybacks shall not be allowed for any
2 net operating losses attributable to taxable years beginning before
3 January 1, 2011.

4 (2) A net operating loss attributable to taxable years beginning
5 on or after January 1, 2011, shall be a net operating loss carryback
6 to each of the two taxable years preceding the taxable year of the
7 loss in lieu of the number of years provided therein.

8 (A) For a net operating loss attributable to a taxable year
9 beginning on or after January 1, 2011, and before January 1, 2012,
10 the amount of carryback to any taxable year shall not exceed 50
11 percent of the net operating loss.

12 (B) For a net operating loss attributable to a taxable year
13 beginning on or after January 1, 2012, and before January 1, 2013,
14 the amount of carryback to any taxable year shall not exceed 75
15 percent of the net operating loss.

16 (C) For a net operating loss attributable to a taxable year
17 beginning on or after January 1, 2013, the amount of carryback to
18 any taxable year shall not exceed 100 percent of the net operating
19 loss.

20 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the
21 Internal Revenue Code, relating to special rules for REITs, and
22 Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,
23 relating to corporate equity reduction interest loss, shall apply as
24 provided.

25 (4) A net operating loss carryback shall not be carried back to
26 any taxable year beginning before January 1, 2009.

27 (e) (1) (A) For a net operating loss for any taxable year
28 beginning on or after January 1, 1987, and before January 1, 2000,
29 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
30 years to which net operating losses may be carried, is modified to
31 substitute “five taxable years” in lieu of “20 years” except as
32 otherwise provided in paragraphs (2), (3), and (4).

33 (B) For a net operating loss for any income year beginning on
34 or after January 1, 2000, and before January 1, 2008, Section
35 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years
36 to which net operating losses may be carried, is modified to
37 substitute “10 taxable years” in lieu of “20 taxable years.”

38 (2) For any income year beginning before January 1, 2000, in
39 the case of a “new business,” the “five taxable years” referred to
40 in paragraph (1) shall be modified to read as follows:

1 (A) “Eight taxable years” for a net operating loss attributable
2 to the first taxable year of that new business.

3 (B) “Seven taxable years” for a net operating loss attributable
4 to the second taxable year of that new business.

5 (C) “Six taxable years” for a net operating loss attributable to
6 the third taxable year of that new business.

7 (3) For any carryover of a net operating loss for which a
8 deduction is denied by Section 24416.3, the carryover period
9 specified in this subdivision shall be extended as follows:

10 (A) By one year for a net operating loss attributable to taxable
11 years beginning in 1991.

12 (B) By two years for a net operating loss attributable to taxable
13 years beginning prior to January 1, 1991.

14 (4) The net operating loss attributable to taxable years beginning
15 on or after January 1, 1987, and before January 1, 1994, shall be
16 a net operating loss carryover to each of the 10 taxable years
17 following the year of the loss if it is incurred by a corporation that
18 was either of the following:

19 (A) Under the jurisdiction of the court in a Title 11 or similar
20 case at any time prior to January 1, 1994. The loss carryover
21 provided in the preceding sentence shall not apply to any loss
22 incurred in an income year after the taxable year during which the
23 corporation is no longer under the jurisdiction of the court in a
24 Title 11 or similar case.

25 (B) In receipt of assets acquired in a transaction that qualifies
26 as a tax-free reorganization under Section 368(a)(1)(G) of the
27 Internal Revenue Code.

28 (f) For purposes of this section:

29 (1) “Eligible small business” means any trade or business that
30 has gross receipts, less returns and allowances, of less than one
31 million dollars (\$1,000,000) during the income year.

32 (2) Except as provided in subdivision (g), “new business” means
33 any trade or business activity that is first commenced in this state
34 on or after January 1, 1994.

35 (3) “Title 11 or similar case” shall have the same meaning as
36 in Section 368(a)(3) of the Internal Revenue Code.

37 (4) In the case of any trade or business activity conducted by a
38 partnership or an “S corporation,” paragraphs (1) and (2) shall be
39 applied to the partnership or “S corporation.”

1 (g) For purposes of this section, in determining whether a trade
2 or business activity qualifies as a new business under paragraph
3 (2) of subdivision (e), the following rules shall apply:

4 (1) In any case where a taxpayer purchases or otherwise acquires
5 all or any portion of the assets of an existing trade or business
6 (irrespective of the form of entity) that is doing business in this
7 state (within the meaning of Section 23101), the trade or business
8 thereafter conducted by the taxpayer (or any related person) shall
9 not be treated as a new business if the aggregate fair market value
10 of the acquired assets (including real, personal, tangible, and
11 intangible property) used by the taxpayer (or any related person)
12 in the conduct of its trade or business exceeds 20 percent of the
13 aggregate fair market value of the total assets of the trade or
14 business being conducted by the taxpayer (or any related person).
15 For purposes of this paragraph only, the following rules shall apply:

16 (A) The determination of the relative fair market values of the
17 acquired assets and the total assets shall be made as of the last day
18 of the first taxable year in which the taxpayer (or any related
19 person) first uses any of the acquired trade or business assets in
20 its business activity.

21 (B) Any acquired assets that constituted property described in
22 Section 1221(1) of the Internal Revenue Code in the hands of the
23 transferor shall not be treated as assets acquired from an existing
24 trade or business, unless those assets also constitute property
25 described in Section 1221(1) of the Internal Revenue Code in the
26 hands of the acquiring taxpayer (or related person).

27 (2) In any case where a taxpayer (or any related person) is
28 engaged in one or more trade or business activities in this state, or
29 has been engaged in one or more trade or business activities in this
30 state within the preceding 36 months (“prior trade or business
31 activity”), and thereafter commences an additional trade or business
32 activity in this state, the additional trade or business activity shall
33 only be treated as a new business if the additional trade or business
34 activity is classified under a different division of the Standard
35 Industrial Classification (SIC) Manual published by the United
36 States Office of Management and Budget, 1987 edition, than are
37 any of the taxpayer’s (or any related person’s) current or prior
38 trade or business activities.

39 (3) In any case where a taxpayer, including all related persons,
40 is engaged in trade or business activities wholly outside of this

1 state and the taxpayer first commences doing business in this state
2 (within the meaning of Section 23101) after December 31, 1993
3 (other than by purchase or other acquisition described in paragraph
4 (1)), the trade or business activity shall be treated as a new business
5 under paragraph (2) of subdivision (e).

6 (4) In any case where the legal form under which a trade or
7 business activity is being conducted is changed, the change in form
8 shall be disregarded and the determination of whether the trade or
9 business activity is a new business shall be made by treating the
10 taxpayer as having purchased or otherwise acquired all or any
11 portion of the assets of an existing trade or business under the rules
12 of paragraph (1) of this subdivision.

13 (5) "Related person" shall mean any person that is related to
14 the taxpayer under either Section 267 or 318 of the Internal
15 Revenue Code.

16 (6) "Acquire" shall include any transfer, whether or not for
17 consideration.

18 (7) (A) For taxable years beginning on or after January 1, 1997,
19 the term "new business" shall include any taxpayer that is engaged
20 in biopharmaceutical activities or other biotechnology activities
21 that are described in Codes 2833 to 2836, inclusive, of the Standard
22 Industrial Classification (SIC) Manual published by the United
23 States Office of Management and Budget, 1987 edition, and as
24 further amended, and that has not received regulatory approval for
25 any product from the United States Food and Drug Administration.

26 (B) For purposes of this paragraph:

27 (i) "Biopharmaceutical activities" means those activities that
28 use organisms or materials derived from organisms, and their
29 cellular, subcellular, or molecular components, in order to provide
30 pharmaceutical products for human or animal therapeutics and
31 diagnostics. Biopharmaceutical activities make use of living
32 organisms to make commercial products, as opposed to
33 pharmaceutical activities that make use of chemical compounds
34 to produce commercial products.

35 (ii) "Other biotechnology activities" means activities consisting
36 of the application of recombinant DNA technology to produce
37 commercial products, as well as activities regarding pharmaceutical
38 delivery systems designed to provide a measure of control over
39 the rate, duration, and site of pharmaceutical delivery.

1 (h) For purposes of corporations whose net income is determined
2 under Chapter 17 (commencing with Section 25101), Section
3 25108 shall apply to each of the following:

4 (1) The amount of net operating loss incurred in any taxable
5 year that may be carried forward to another taxable year.

6 (2) The amount of any loss carry forward that may be deducted
7 in any taxable year.

8 (i) The provisions of Section 172(b)(1)(D) of the Internal
9 Revenue Code, relating to bad debt losses of commercial banks,
10 shall not be applicable.

11 (j) The Franchise Tax Board may prescribe appropriate
12 regulations to carry out the purposes of this section, including any
13 regulations necessary to prevent the avoidance of the purposes of
14 this section through splitups, shell corporations, partnerships, tiered
15 ownership structures, or otherwise.

16 (k) The Franchise Tax Board may reclassify any net operating
17 loss carryover determined under either paragraph (2) or (3) of
18 subdivision (b) as a net operating loss carryover under paragraph
19 (1) of subdivision (b) upon a showing that the reclassification is
20 necessary to prevent evasion of the purposes of this section.

21 (l) Except as otherwise provided, the amendments made by
22 Chapter 107 of the Statutes of 2000 shall apply to net operating
23 losses for taxable years beginning on or after January 1, 2000.

24 SEC. 7. Section 24416.9 of the Revenue and Taxation Code
25 is amended to read:

26 24416.9. (a) Notwithstanding Sections 24416, 24416.1,
27 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and
28 Section 172 of the Internal Revenue Code, no net operating loss
29 deduction shall be allowed for any taxable year beginning on or
30 after January 1, 2008, and before January 1, 2010.

31 (b) For any net operating loss or carryover of a net operating
32 loss for which a deduction is denied by subdivision (a), the
33 carryover period under Section 172 of the Internal Revenue Code
34 shall be extended as follows:

35 (1) By one year, for losses incurred in taxable years beginning
36 on or after January 1, 2008, and before January 1, 2009.

37 (2) By two years, for losses incurred in taxable years beginning
38 before January 1, 2008.

~~(e) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.~~

~~(d)~~

(c) The provisions of this section shall not apply to a taxpayer with income subject to tax under this part of less than five hundred thousand dollars (\$500,000) for the taxable year.

SEC. 8. Section 24416.10 of the Revenue and Taxation Code is amended to read:

24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, ~~and a net operating loss attributable to a taxable year beginning on or after January 1, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.~~

SEC. 9. Section 25120 of the Revenue and Taxation Code is amended to read:

25120. As used in Sections 25120 to 25139, inclusive, which shall hereafter be referred to as “this act,” unless the context otherwise requires:

(a) “Business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations.

(b) “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) “Nonbusiness income” means all income other than business income.

~~(e) For taxable years beginning before January 1, 2011, “sales” means all gross receipts of the taxpayer not allocated under Sections 25123 to 25127, inclusive.~~

~~(f) For taxable years beginning on or after January 1, 2011:~~

~~(1)~~

1 (e) “Sales” means all gross receipts of the taxpayer not allocated
2 under Sections 25123 to 25127, inclusive.

3 (2) ~~“Gross receipts” means the gross amounts realized (the sum~~
4 ~~of money and the fair market value of other property or services~~
5 ~~received) on the sale or exchange of property, the performance of~~
6 ~~services, or the use of property or capital (including rents, royalties,~~
7 ~~interest, and dividends) in a transaction that produces business~~
8 ~~income, in which the income, gain, or loss is recognized (or would~~
9 ~~be recognized if the transaction were in the United States) under~~
10 ~~the Internal Revenue Code, as applicable for purposes of this part.~~
11 ~~Amounts realized on the sale or exchange of property shall not be~~
12 ~~reduced by the cost of goods sold or the basis of property sold.~~
13 ~~Gross receipts, even if business income, shall not include the~~
14 ~~following items:~~

15 (A) ~~Repayment, maturity, or redemption of the principal of a~~
16 ~~loan, bond, mutual fund, certificate of deposit, or similar~~
17 ~~marketable instrument.~~

18 (B) ~~The principal amount received under a repurchase agreement~~
19 ~~or other transaction properly characterized as a loan.~~

20 (C) ~~Proceeds from issuance of the taxpayer’s own stock or from~~
21 ~~sale of treasury stock.~~

22 (D) ~~Damages and other amounts received as the result of~~
23 ~~litigation.~~

24 (E) ~~Property acquired by an agent on behalf of another.~~

25 (F) ~~Tax refunds and other tax benefit recoveries.~~

26 (G) ~~Pension reversions.~~

27 (H) ~~Contributions to capital (except for sales of securities by~~
28 ~~securities dealers).~~

29 (I) ~~Income from discharge of indebtedness.~~

30 (J) ~~Amounts realized from exchanges of inventory that are not~~
31 ~~recognized under the Internal Revenue Code.~~

32 (K) ~~Amounts received from transactions in intangible assets~~
33 ~~held in connection with a treasury function of the taxpayer’s unitary~~
34 ~~business and the gross receipts and overall net gains from the~~
35 ~~maturity, redemption, sale, exchange, or other disposition of those~~
36 ~~intangible assets. For purposes of this subparagraph, “treasury~~
37 ~~function” means the pooling, management, and investment of~~
38 ~~intangible assets for the purpose of satisfying the cash flow needs~~
39 ~~of the taxpayer’s trade or business, such as providing liquidity for~~
40 ~~a taxpayer’s business cycle, providing a reserve for business~~

1 contingencies, and business acquisitions, and also includes the use
2 of futures contracts and options contracts to hedge foreign currency
3 fluctuations. A taxpayer principally engaged in the trade or business
4 of purchasing and selling intangible assets of the type typically
5 held in a taxpayer's treasury function, such as a registered
6 broker-dealer, is not performing a treasury function, for purposes
7 of this subparagraph, with respect to income so produced.

8 ~~(L) Amounts received from hedging transactions involving~~
9 ~~intangible assets. A "hedging transaction" means a transaction~~
10 ~~related to the taxpayer's trading function involving futures and~~
11 ~~options transactions for the purpose of hedging price risk of the~~
12 ~~products or commodities consumed, produced, or sold by the~~
13 ~~taxpayer.~~

14 ~~(3) Exclusion of an item from the definition of "gross receipts"~~
15 ~~shall not be determinative of its character as business or~~
16 ~~nonbusiness income.~~

17 ~~(4) The changes to this section by the act adding this sentence~~
18 ~~pertaining to taxable years beginning before January 1, 2011,~~
19 ~~constitute clarifying, nonsubstantive changes.~~

20 ~~(g)~~

21 ~~(f) "State" means any state of the United States, the District of~~
22 ~~Columbia, the Commonwealth of Puerto Rico, any territory or~~
23 ~~possession of the United States, and any foreign country or political~~
24 ~~subdivision thereof.~~

25 SEC. 10. Section 25128.5 of the Revenue and Taxation Code
26 is repealed.

27 ~~25128.5. (a) Notwithstanding Section 38006, for taxable years~~
28 ~~beginning on or after January 1, 2011, any apportioning trade or~~
29 ~~business, other than an apportioning trade or business described~~
30 ~~in subdivision (b) of Section 25128, may make an irrevocable~~
31 ~~annual election on an original timely filed return, in the manner~~
32 ~~and form prescribed by the Franchise Tax Board to apportion its~~
33 ~~income in accordance with this section, and not in accordance with~~
34 ~~Section 25128.~~

35 ~~(b) Notwithstanding Section 38006, for taxable years beginning~~
36 ~~on or after January 1, 2011, all business income of an apportioning~~
37 ~~trade or business making an election described in subdivision (a)~~
38 ~~shall be apportioned to this state by multiplying the business~~
39 ~~income by the sales factor.~~

1 ~~(e) The Franchise Tax Board is authorized to issue regulations~~
2 ~~necessary or appropriate regarding the making of an election under~~
3 ~~this section, including regulations that are consistent with rules~~
4 ~~prescribed for making an election under Section 25113.~~

5 SEC. 11. Section 25135 of the Revenue and Taxation Code is
6 amended to read:

7 25135. ~~(a)~~ Sales of tangible personal property are in this state
8 if:

9 ~~(1)~~

10 ~~(a)~~ The property is delivered or shipped to a purchaser, other
11 than the United States government, within this state regardless of
12 the f.o.b. point or other conditions of the sale.

13 ~~(2)~~

14 ~~(b)~~ The property is shipped from an office, store, warehouse,
15 factory, or other place of storage in this state and ~~(A)~~ ~~(1)~~ the
16 purchaser is the United States government or ~~(B)~~ ~~(2)~~ the taxpayer
17 is not taxable in the state of the purchaser.

18 ~~(b)~~ For taxable years beginning on or after January 1, 2011, for
19 purposes of determining whether sales are in this state and included
20 in the numerator of the sales factor, all sales of the combined
21 reporting group properly assigned to this state under this section
22 shall be included in the sales factor numerator for this state
23 regardless of whether the member of the combined reporting group
24 making the sale is subject to the taxes imposed under Chapter 2
25 (commencing with Section 23101) or Chapter 3 (commencing with
26 Section 23501) of this part. All sales not assigned to this state
27 pursuant to subdivision (a) shall not be included in the sales factor
28 numerator for this state if a member of the combined reporting
29 group of the taxpayer is taxable in the state of the purchaser.

30 ~~(e) The Franchise Tax Board may prescribe regulations as~~
31 ~~necessary or appropriate to carry out the purposes of this section.~~

32 SEC. 12. Section 25136 of the Revenue and Taxation Code,
33 as added by Section 14 of Chapter 10 of the 3rd Extraordinary
34 Session of the Statutes of 2009, is repealed.

35 25136. For taxable years beginning on or after January 1, 2011:

36 ~~(a)~~ Sales, other than sales of tangible personal property, are in
37 this state as follows:

38 ~~(1)~~ Sales from services are in this state to the extent the
39 purchaser of the service received the benefit of the service in this
40 state.

1 ~~(2) Sales from intangible property are in this state to the extent~~
2 ~~the property is used in this state. In the case of marketable~~
3 ~~securities, sales are in this state if the customer is in this state.~~

4 ~~(3) Sales from the sale, lease, rental, or licensing of real property~~
5 ~~are in this state if the real property is located in this state.~~

6 ~~(4) Sales from the rental, lease, or licensing of tangible personal~~
7 ~~property are in this state if the property is located in this state.~~

8 ~~(b) The Franchise Tax Board may prescribe regulations as~~
9 ~~necessary or appropriate to carry out the purposes of this section.~~

10 SEC. 13. Section 25136 of the Revenue and Taxation Code,
11 as added by Section 14 of Chapter 17 of the 3rd Extraordinary
12 Session of the Statutes of 2009, is repealed.

13 ~~25136. For taxable years beginning on or after January 1, 2011:~~

14 ~~(a) Sales, other than sales of tangible personal property, are in~~
15 ~~this state as follows:~~

16 ~~(1) Sales from services are in this state to the extent the~~
17 ~~purchaser of the service received the benefit of the service in this~~
18 ~~state.~~

19 ~~(2) Sales from intangible property are in this state to the extent~~
20 ~~the property is used in this state. In the case of marketable~~
21 ~~securities, sales are in this state if the customer is in this state.~~

22 ~~(3) Sales from the sale, lease, rental, or licensing of real property~~
23 ~~are in this state if the real property is located in this state.~~

24 ~~(4) Sales from the rental, lease, or licensing of tangible personal~~
25 ~~property are in this state if the property is located in this state.~~

26 ~~(b) The Franchise Tax Board may prescribe regulations as~~
27 ~~necessary or appropriate to carry out the purposes of this section.~~

28 SEC. 14. Section 25136 of the Revenue and Taxation Code,
29 as amended by Section 13 of Chapter 17 of the 3rd Extraordinary
30 Session of the Statutes of 2009, is amended to read:

31 25136. ~~(a)~~ Sales, other than sales of tangible personal property,
32 are in this state if:

33 ~~(1)~~

34 ~~(a)~~ The income-producing activity is performed in this state; or

35 ~~(2)~~

36 ~~(b)~~ The income-producing activity is performed both in and
37 outside this state and a greater proportion of the income-producing
38 activity is performed in this state than in any other state, based on
39 costs of performance.

- 1 ~~(b) This section shall not apply to taxable years beginning on~~
2 ~~or after January 1, 2011, and as of that date is repealed.~~
3 SEC. 15. This act provides for a tax levy within the meaning
4 of Article IV of the Constitution and shall go into immediate effect.

O